

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 7, 2010

In the Matter of L. M. SMYTH, Minor.

No. 295072
Oakland Circuit Court
Family Division
LC No. 08-743366-NA

In the Matter of O'BERRY, Minors.

No. 295077
Oakland Circuit Court
Family Division
LC No. 07-729356-NA

Before: GLEICHER, P.J., and ZAHRA and K.F. KELLY, JJ.

PER CURIAM.

Respondent, the mother of the children involved in these consolidated cases, appeals as of right a circuit court order terminating her parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm.

In May 2006, respondent gave birth to twin boys fathered by NO. NO caused a spiral fracture of one twin's leg after a September 10, 2006 argument with respondent, who was not present when NO inflicted the injury. By the next day, respondent had discovered severe swelling in the child's broken leg and took him to a hospital. According to an October 13, 2006 petition prepared by the Department of Human Services (DHS) (LC No. 07-729356-NA), respondent became "visibly upset" when she learned that NO had intentionally inflicted the child's injury. The petition also averred that respondent and NO had prior "domestic disputes," and that "[t]here is a previous complaint from 5/2/06 alleging that the mother had a history of marijuana and alcohol use prior to knowing she was pregnant." The petition requested termination of NO's parental rights, but noted that the children continued to reside in respondent's custody. In January 2007, a circuit court referee found probable cause supporting

authorization of the petition concerning NO and respondent, and left the children in respondent's care.¹

In March 2007, respondent acknowledged in testimony that she had smoked marijuana while pregnant with the twins, although she denied knowing she was pregnant. Respondent also conceded that, in addition to her relationship with NO, she had at least one past relationship with a physically abusive man, and that she and the twins currently resided with respondent's brother, who remained on parole related to an armed robbery conviction. On March 30, 2007, the circuit court ordered the twins removed from respondent's care and placed in temporary DHS custody. In mid-April 2007, respondent admitted the allegations of the 2006 petition pertaining to her. The circuit court instructed respondent to undergo a psychological evaluation, attend supervised parenting times, undergo random drug screens three times a week, successfully complete parenting classes, maintain a legal income source and stable housing, and engage in individual therapy and domestic violence counseling.

By January 2008, respondent had given birth to the daughter at issue in LC No. 08-743366-NA, and had achieved substantial compliance toward the elements of her parent-agency agreement. Respondent's three times weekly drug screens all tested negative for alcohol or illegal substances, and she completed parenting classes, was participating in therapy, had enrolled in school, regularly attended parenting time with the twins, and took care of her infant daughter, who was born with a tracheal defect that necessitated connection to a sleep apnea monitor. However, respondent did not yet have a job or a suitable residence; respondent received notice at a January 2008 dispositional review hearing that a cousin sharing respondent's residence had past involvement with Children's Protective Services. Also at the January 2008 review hearing, a referee authorized unsupervised parenting time on the condition that respondent present the court with a financial plan, and the referee reduced respondent's drug screens to once weekly.

In February 2008, the circuit court authorized a DHS petition seeking temporary custody of respondent's youngest daughter (LC No. 08-743366-NA). The petition asserted that respondent remained unemployed, and expressed concern about respondent's allowance of contact between her daughter and Michael Ruple, a felon who "has admitted his extensive criminal history to her," and the soundness of respondent's financial plan, which relied heavily on respondent's mother. A referee found removal of the daughter from respondent's custody warranted on the grounds that respondent had not acted promptly to eject the cousin with a criminal history from the residence that respondent and the cousin shared, especially in light of respondent's past demonstrations of "extraordinarily poor judgment in choosing the people with whom she chooses to spend her time."

At an April 2008 pretrial hearing, the children's guardian ad litem advised the circuit court that respondent had tested positive for adulterants and marijuana on March 28, 2008 and March 29, 2008. The court suspended her parenting time pending three consecutive negative

¹ The circuit court terminated NO's parental rights in June 2007, and he is not a party to this appeal.

drug screens. By mid-May 2008, respondent had resumed parenting times and located employment at a fast food restaurant. Although the referee recognized respondent's "significant progress," the referee rejected respondent's budget because of the extent to which it relied on others, including respondent's mother. In early June 2008, respondent admitted to an amended allegation paragraph in the February 2008 petition involving her daughter, specifically that she tested positive for "adulterants" on March 28, 2009 and marijuana on March 29, 2009, after having smoked a cigarette she knew contained marijuana.

Nonetheless, as of July 2008, the circuit court had allowed respondent supervised overnight visitation in the discretion of the DHS. However, the transcript of an October 2008 review hearing reflects that respondent again tested positive for marijuana on July 28, 2008, had a recent employment setback, and voiced a desire to relinquish her parental rights. The record of a November 2008 hearing reveals that respondent had changed her mind with respect to voluntarily giving up her parental rights, but had not attended drug screens requested during the past few weeks, lost her job, only pursued parenting time of one of the twins during a hospitalization on September 19, 2008, and had failed to regularly maintain contact with case workers. At the close of the November 2008 hearing, the circuit court denied respondent's request for parenting time with the children. Also in November 2008, the DHS prepared a petition requesting termination of respondent's parental rights to all three children.

By the time of a June 2009 review hearing, respondent had located part-time employment at another fast food restaurant, but a DHS worker expressed that respondent had not contacted her case workers, had not submitted to recent drug screens, and had unsuitable current housing. The circuit court ordered that respondent could resume parenting time if she produced three "consecutive negative drug screens," and the court scheduled a termination hearing.

Respondent detailed at the termination hearing her substantial progress for an extended period toward the components of her parent-agency agreement, and discussed the difficult weighing of the potential relinquishment of her parental rights in 2008 due to extremely difficult economic circumstances, an option that she now soundly rejected. Respondent testified that money no longer remained "a problem" in light of the facts that she had searched out four part-time jobs that yielded between \$700 and \$800 a month,² and her mother had pledged to additionally support respondent and the children to whatever degree necessary, financially and by caring for the children. The parties agreed that shortly before the termination hearing respondent had secured a three-bedroom modular house on which she had performed significant renovations, although more were needed. With regard to parent-agency agreement compliance between October 2008 and June 2009, respondent conceded that she did not continue pursuing the components of her parent-agency agreement, and that she never received notification from the court or the DHS that she should cease compliance with the agreement. Respondent maintained that the DHS made no efforts to contact her between Fall 2008 and Spring 2009, and

² Respondent gave her case worker a copy of a pay stub from Wendy's, where respondent worked one day a week. However, respondent had not supplied her case worker documentation of two cleaning jobs or a maintenance and landscaping job for which she received cash payments.

respondent's counsel highlighted the numerous workers assigned respondent's cases since their inception. The current DHS worker assigned management of respondent's case insisted that through the November 2008 preparation of a permanent custody petition the goal in the case constituted reunification of respondent and her children. The worker denied that anyone had advised respondent she could cease complying with her parent-agency agreement, as respondent did commencing in September 2008.

The circuit court found clear and convincing evidence of respondent's failure to adhere to several elements of her parent-agency agreement: remaining drug-free, appearing for random drug screens, presenting an amended financial plan, documenting her primary employment, maintaining suitable housing, and keeping in contact with her case workers. The court further found that respondent had neglected to attend parenting times for "at least several months without any explanation or excuse," and that even accepting her belief that the court had suspended parenting time in November 2008, "there was no effort on her part or through her attorney to change that," at least up to June 2009. The circuit court concluded that the evidence supported termination of respondent's parental rights under MCL 712A.19b(3)(c)(i) and (g).

A best interests hearing occurred in October 2009. Clinical psychologist Gabriel Martinez testified that he performed a September 2009 psychological evaluation of respondent. Martinez opined that termination of respondent's parental rights would "perhaps" be in her daughter's best interests given respondent's "heavy use of denial, the unwillingness to acknowledge any deficiencies or problems or shortcomings as a parent and that she's very likely to continue to be inconsistent in her ability to comply with the Court's expectations." A former therapist of respondent's, in 2007 and early 2008, offered her view that respondent appeared like a conscientious, insightful and loving mother, but acknowledged that she had never observed respondent and her children together. Respondent's mother testified that respondent loved the children and acted as a very good caregiver. Respondent recounted some of what she learned in parenting classes, described the close bond that she and the children shared, and reiterated her readiness to care for the children in her almost completely renovated modular house. A DHS worker testified that she had visited respondent's residence the previous evening and deemed the home unsuitable because of a broken living room storm window, another living room window that allowed air to enter from outside, an "off track" window in one of the children's bedrooms that also "didn't close properly," a missing face plate for an outlet, and the absence of any safety plugs in the residence's outlets. The circuit court recited respondent's laudable efforts in the course of the child protective proceedings and summarized the best interests hearing testimony, before concluding as follows that termination served the children's best interests:

This matter has now dragged on for years and these young children need permanency in their home. It is the opinion of the Guardian ad Litem that relying upon the testimony of Mr. Martinez that there is no reasonable likelihood that there's going to be improvement that will continue consistently and permanently to the benefit of these children. And the Guardian ad Litem discounted to some degree [respondent's therapist] who did not have any contact with the mother since March of 2008 and his concern over the uncertainty of the mother's employment, and most importantly as Guardian ad Litem his concern over the need for permanency and stability for the children. His recommendation is that the rights of the mother be terminated.

. . . I've spoken of the argument made by the mother. The argument made by the Guardian ad Litem and the argument made by the Prosecution was that while she did do some things that I think I give her more credit for than the Prosecutor is but it ends up being too little, too late. He questions her blaming the Department of Human Services when she did not do certain things to take control and improve the situation. She had years to rectify the situation and did not do that. Those arguments made by the Prosecution as well as the recommendation by the Guardian ad Litem dovetail very closely and consistently with the detailed report from Gabriel Martinez, the psychologist, who submitted that report He concludes that she has been inconsistent in her compliance in the past, and the impression is that this could resume in the future. He says clearly in his written report it is the opinion of this examiner that she could again become neglectful as a parent but not recognize her failure to do much to change this. The evaluation indicates that there can be heavy use of denial and unwillingness to acknowledge faults or weaknesses in herself. As a result, it may be difficult for her to overcome her shortcomings as a parent if she does not accept that she has any. . . . [T]he overwhelming impression that he gave was that there are too many concerns here to drag this out into the future, continuing to destabilize [respondent]'s future and that of the three children.

Accordingly, the court finds that it is in the best interests of the children in establishing stability and permanency for them to deny the mother's parental rights, and this is the order of the court.

We review for clear error a circuit court's decision to terminate parental rights. MCR 3.977(J). The clear error standard controls our review of "both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A decision qualifies as clearly erroneous when, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes us as more than just maybe or probably wrong. *In re Trejo*, 462 Mich at 356.

As the circuit court recognized, respondent exhibited commendable and significant achievement over a sustained period toward demonstrating her parental suitability through the pursuit of most elements of her parent-agency agreement. Notwithstanding respondent's significant commitment, as the circuit court also found, the record clearly and convincingly establishes multiple serious, and some extended, gaps in respondent's compliance: her two positive marijuana screens in March 2008 and July 2008, her subsequent failure to appear for any screens over the course of the next several months, her neglect to attend parenting times for an approximate two-month period between September 2008 and November 2008, when the circuit court denied her request for parenting time on the record, and the lack of any apparent efforts to maintain contact with the DHS for at least several months between September 2008 and Spring 2009. The record before us also leaves us unable to characterize as clearly erroneous the circuit court's findings that respondent had not verified her employment and did not possess stable and appropriate housing. In summary, the circuit court did not clearly err to the extent it found clear

and convincing evidence that (1) respondent had neglected the children, and (2) in light of respondent's significant shortfalls in adhering to the elements of her parent-agency agreement after more than two years of pursuing the reunification plan, no reasonable likelihood existed that respondent could properly care for the children in a reasonable time given their young ages. MCL 712A.19b(3)(c)(i) and (g). Contrary to respondent's suggestion on appeal that the DHS shirked its responsibility to provide sufficient reunification services, our careful review of the entire record reveals that the DHS cooperated with respondent in offering services and assistance for more than two years, as long as respondent remained willing to participate.³

We also detect no clear error in the circuit court's findings concerning the children's best interests. MCL 712A.19b(5). At the time of the best interests hearing, the DHS involvement with the family extended back three years, and respondent had well over two years of DHS assistance to show that she could properly parent the children. The children had spent the majority of their young lives as temporary court wards. Although respondent undeniably shared a bond with and loved the children, the children's needs for permanency, respondent's recent lapses in treatment plan participation, and her level of denial adequately support the circuit court's conclusion that termination of respondent's parental rights served the children's best interests.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Brian K. Zahra

/s/ Kirsten Frank Kelly

³ We decline to consider respondent's complaint on appeal relating to a DHS worker's alleged forgery of a signature on a DHS document because respondent has offered no specific elaboration or suggestion of any manner in which the purported forgery had any effect prejudicial to respondent in these child protective proceedings. *Greater Bethesda Healing Springs Ministry v Evangel Builders & Constr Managers, LLC*, 282 Mich App 410, 413; 766 NW2d 874 (2009) (noting that this Court deems insufficiently briefed issues abandoned on appeal).